



IT IS ORDERED

Date Entered on Docket: January 17, 2014

The Honorable Robert H Jacobvitz
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

THOMAS JOHN BYRNE,

Debtor.

Case No. 7-13-12164-JA

**ORDER RESOLVING AMENDED MOTION OF FRANCES
MONTOKA AND JOSE MONTOKA TO MODIFY AUTOMATIC STAY**

THIS MATTER came before the Court for a preliminary hearing on December 11, 2013, on the Amended Motion of Frances Montoya and Jose Montoya to Modify Automatic Stay (the "Motion"), filed on August 1, 2013 (Docket No. 13), and the objection thereto filed by the Debtor on August 21, 2013 (Docket No. 16). The Court, being fully advised, FINDS:

1. On August 2, 2012, Frances and Jose Montoya ("Montoyas") filed a medical malpractice case against the Debtor in Montoya et al versus Thomas J. Byrne et al, Cause No. D-619-CV-2012-00279, Sixth Judicial District Court, County of Luna, State of New Mexico (the "Litigation").

2. Debtor initiated this case by filing a voluntary petition for relief on June 26, 2013 (the "Petition Date").

3. In the Motion, Montoyas ask that the Court modify the automatic stay to allow them to proceed with the Litigation against Debtor's insurance policy.

4. The deadline for objections to be timely filed to the Debtor receiving a discharge or to the dischargeability of debts was September 23, 2013.

5. The instant case is a "no asset" chapter 7 case. The chapter 7 trustee entered a report of no distribution on October 17, 2013. Accordingly, Debtor is eligible for a chapter 7 discharge and the case is ripe for entry of a final decree pursuant to 11 U.S.C. § 350(a) and Bankruptcy Rule 5009(a).

6. The only matters still pending herein are two motions for stay relief to proceed against insurance policies of the Debtor, which would be mooted by the Debtor receiving a discharge or by the case being closed pursuant to 11 U.S.C. § 362(c)(2).

7. At a preliminary hearing also held on December 11, 2013, Counsel for Norma Carreon, the movant on the other stay relief motion, expressed an interest in attempting to purchase an asset of the Bankruptcy Estate from the trustee.

8. Accordingly, the Court will afford the same opportunity to Montoyas.

It is therefore ORDERED, ADJUDGED, and DECREED that:

A. The automatic stay is hereby modified to allow Montoyas to proceed with prosecuting Case No. D-619-CV-2012-00279 solely to recover from Debtor's insurance policy, if any;

B. The automatic stay is not modified to allow Montoyas to recover a claim against the Debtor or against property of the Estate;

C. Montoyas or the chapter 7 trustee have thirty (30) days from the date of entry of this Order file to a motion seeking Court approval of the sale of assets to Montoyas;

D. If no such sale motion is filed by any party within thirty (30) days of the date of entry of this Order, the case may be closed by the Clerk of the Court; and

E. Entry of Debtor's discharge is not delayed by this Order.

END OF ORDER

Submitted by:

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